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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the International Group of P&I Clubs

Summary:	For the avoidance of misunderstanding, this paper sets out the proposals of the International Group of P&I Clubs in relation to the two issues of sharing the burden of compensation and substandard shipping.
Action to be taken:	The Working Group is invited to take note of the proposals contained in this document.

- 1 Discussions with industry partners are continuing and it is hoped that a more comprehensive report can be made to the next session of the Working Group. However, in the meantime it has become apparent that the position of the Clubs on a number of issues may not be fully understood. This paper is therefore intended to provide a brief summary for the avoidance of misunderstanding.
- 2 Subject to the report of the claims position which is to be made to the Working Group, the claims figures to date seem to indicate a broad sharing of the historical cost of compensation between the shipping and oil industries. Given the 50% increases which came into effect last year it is likely that the shipping industry's proportion of the compensation payable under the Conventions now in force will increase in the future. However, this increase in exposure is more than offset by the exposure for the oil industry under the Supplementary Fund Protocol. For this reason the Clubs proposed at the Diplomatic Conference that the minimum limit of liability for tankers could be increased under an agreement (known as STOPIA) between the shipowners entered in the Clubs and the IOPC Fund which would have the effect of reimbursing the Fund for any sums paid by the Fund below a threshold of 20 million SDR in any pollution incident which occurred in a State which had adopted the Supplementary Fund Protocol.
- 3 However, on reflection it became apparent that this proposal was an inherently unstable way of sharing the burden of compensation going forward. We have sought, therefore, to find a way of preserving the stability and effectiveness of the existing system, which has been remarkably effective both in compensating victims, and in sharing the burden of compensation fairly between the two industries involved, as the claims figures seem to demonstrate. Because of the unpredictability of large claims, there could be no certainty that the STOPIA proposal would maintain this balance in all circumstances. Instead, and in order to maintain the stability and balance of the existing structure, the Clubs are prepared to recommend to their Boards that the Clubs, on behalf of their shipowner members, enter into a contractually binding agreement with the IOPC Funds to share equally the

burden imposed by the Supplementary Fund Protocol. This proposal would permit the 50/50 sharing of the existing system to be extended into the future and make further revision of the Conventions unnecessary.

- 4 In this way it would be possible to avoid the upheaval which would be inevitable, not just in the revision process, but also in the consequent treaty position, with different States denouncing and ratifying at different times. If the revision process was delayed for a period of, say, ten years it would also give an opportunity for the claims position to be tracked in the light of the changes recently agreed as well as the effect of the other proposals made by the Working Group.
 - 5 The proposal outlined above does not address the other issue which has engaged the attention of States, namely, the issue of substandard shipping. As we have indicated on a number of occasions, in our experience the imposition of additional liability is unlikely to affect the standards of an individual shipowner since it is the purpose of insurance (required under CLC) to spread the risk over the industry as a whole. Nonetheless, the Clubs, as mutual insurers believe that the issue of substandard shipping must be addressed seriously. A summary of the numerous measures already undertaken by Clubs was submitted to the last meeting of the Working Group. Moreover, the Clubs had already begun a process of further examination which is likely to be accelerated by the findings of the report which is to be made to the Marine Transport Committee of OECD on 24th May. The Clubs are therefore already committed to a thoroughgoing analysis of the issue and for this purpose would propose that a Commission be established with input from States and IMO in order to ensure transparency and accountability. The shipping and oil industries are invited to take part and this proposal naturally forms much of the subject matter of the joint industry discussions which are currently taking place.
 - 6 Until the recommendations of the OECD report are known it is not possible to provide a comprehensive list of the subjects to be addressed by such a Commission but it is hoped that a detailed report can be made to the next meeting of the Working Group which could also include detailed input from the other industries concerned.
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